

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PAUL AGUIRRE,

Petitioner,

v.

Case No. 2:09-CV-10394

CARMEN PALMER,

Respondent.

SUPPLEMENTAL ORDER OF TRANSFER

Petitioner Paul Aguirre, has filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging his 1988 convictions for third-degree criminal sexual conduct and second habitual offender which were imposed following a jury trial in the Washtenaw County Circuit Court. Petitioner was sentenced to 10 to 22 ½ years imprisonment. The Magistrate Judge has issued an order transferring this case to the United States Court of Appeals for the Sixth Circuit as a second or successive petition. For the reasons stated in that order, the court agrees that this case should be transferred to the Sixth Circuit as a second or successive petition.¹ Accordingly,

¹The court issues this supplemental order of transfer to avoid any dispute as to the Magistrate Judge's authority to issue the initial transfer order or whether he may simply issue a report and recommendation recommending the transfer. *Compare In re Jimenez*, 211 F. App'x 297 (5th Cir. 2006) ("The magistrate judge determined that the petition was successive, and the district court adopted the magistrate judge's findings and conclusions, ordering transfer of the matter to this court.") *with Jergens v. Brigano*, Nos. 3:97CV348, 3:02CV426, 2008 WL 356494, *1 n. 2 (S.D. Ohio Feb. 7, 2008) (noting that a motion to transfer an alleged successive habeas petition to the Sixth Circuit is a non-dispositive pretrial motion which may be decided by a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) without the need for Report and Recommendation to the District Judge).

IT IS ORDERED that the Clerk of the Court is DIRECTED to transfer this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 and *Sims v. Terbush*, 111 F.3d 45, 47 (6th Cir. 1997) (“[W]hen a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or successive petition for habeas corpus relief . . . is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631”).

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 20, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record and Paul Aguirre #198266, Deerfield Correctional Facility, 1755 Harwood Rd., Ionia, MI 48846 on this date, February 20, 2009, by electronic and/or ordinary mail.

S/Lisa Ware for Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522